



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

**J.B. VAN HOLLEN
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March 25, 2010

The Honorable James E. Doyle, Jr.
Governor of Wisconsin
115 East, State Capitol
Madison, WI 53702

The Honorable Scott Fitzgerald
Senate Minority Leader
202 South, State Capitol
Madison, WI 53702

The Honorable Russell Decker
Senate Majority Leader
211 South, State Capitol
Madison, WI 53702

The Honorable Jeff Fitzgerald
Assembly Minority Leader
201 West, State Capitol
Madison, WI 53702

The Honorable Michael Sheridan
Speaker of the Assembly
211 West, State Capitol
Madison, WI 53702

Dear Governor Doyle, Senator Decker, Senator Fitzgerald, Speaker Sheridan and Representative Fitzgerald:

Now that the Patient Protection and Affordable Care Act ("the Act") has been signed into law by the President of the United States, the State of Wisconsin needs to determine whether an action should be brought to determine the constitutionality of the Act, given the Act's far-reaching provisions, and its impact on the State's sovereign interests.

As you are aware, under state law, the attorney general may only bring an action to determine the constitutionality of the Act if authorized by the governor or either house of the legislature. See Section 165.25(1m), Wisconsin Statutes. My practice since becoming attorney general has been to act once authorized under this statute, so long as a sufficient legal basis for action exists.

Based on my preliminary review of the Act, I have concluded that a sufficient legal basis exists to contest the individual mandate to carry health insurance or pay a penalty under the Act. It is not clear that Congress has an enumerated power under Article 1 of the U.S. Constitution to impose this requirement on a citizen. Further, the tax imposed on a citizen for failure to carry such insurance may not comport with the requirement that any direct tax be apportioned among the states in accordance with Article 1, Sections 2 and 9 of the U.S. Constitution.

In addition, I am very concerned that the Act upsets the proper balance of power between the federal government and the states that was envisioned by the Founders. The federal government is a government of limited, enumerated powers. For Congress to act, it must have power given to it by the U.S. Constitution. Any power not given to the federal government resides with the states under the Tenth Amendment, unless the exercise of state power is limited by a state constitution. What Congress has approved in the Act is a sweeping mandate that every citizen in the country purchase health insurance or face a penalty. The power asserted here is unprecedented and unique. The United States Supreme Court has not had a prior opportunity to evaluate an equivalent exercise of power by Congress under the Act. As the state attorney general, I have a unique obligation to ensure that the citizens of our state, through their elected representatives, retain the power to determine our own laws without encroachment from the federal government, except as authorized by the U.S. Constitution. Importantly, the Wisconsin Legislature has never enacted a law to require our citizens to carry health insurance or face a penalty.

As the state's lawyer, I take very seriously my duty to protect our State's sovereignty. Although several states have initiated legal action and there are likely to be more challenges to the Act made by other states and individual citizens, I believe that Wisconsin must act to protect its sovereign interests and the interests of the citizens of this State by bringing an action to contest the constitutionality of the Act. I therefore request authorization under section 165.25(1m) of the Wisconsin Statutes to bring such an action.

Sincerely,

A handwritten signature in black ink, appearing to read "J.B. Van Hollen", with a stylized, cursive script.

J.B. VAN HOLLEN
Attorney General

JBV:RPT:KMS:SPM/pss

c: The Honorable Members of the Wisconsin Legislature